

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3808 OF 2001

M/s.Tata Engineering and Locomotive)
Company Limited, a Company incorporated)
under the Indian Companies Act, 1956)
having its factory at Pimpri)
Pune 411 018.).. Petitioner

Versus

- 1) Shri Prakash Deoram Gir)
At & Post : Bhekarainagar)
Telco Society, Pune-Saswad Road)
Phingi, Tal.: Haveli)
Dist.: Thane.)
- 2) Smt.A.V.Suvarna, Presiding Officer)
2nd Labour Court, Pune having her)
office at the PMT Building)
Swargate, Pune.).. Respondents

Mr.K.S.Bapat i/b.M/s.Mulla & Mulla and Craigie Blunt
& Caroe for the Petitioner.

None present for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 4th JULY 2005

ORAL JUDGMENT :

. This Petition challenges the Award Part-I dated
31st August 2000 passed by the Presiding Officer, 2nd
Labour Court, Pune in Reference (IDA) No.343 of 1996
holding that the enquiry held against the workman was
not fair and proper and that the findings were perverse.

2. Respondent No.1 workman was employed with the

Petitioner Company for about fourteen years during which time his service record was not good. He used to remain absent, habitually. Ultimately, when he was absent for about 173 days during the period 1st January to 31st December 1992, a charge sheet was issued to him on 12th June 1003 and enquiry was initiated. The workman participated in the enquiry after which the Enquiry Officer's report was submitted. Pursuant to that, the Petitioner Company decided to terminate his services on 9th February 1994. Aggrieved by this decision of the Petitioner, the workman sought a Reference under the Industrial Disputes Act, 1947 in respect of his demand for reinstatement with continuity of service and full back wages. The Reference was accordingly made for adjudication before the 2nd Labour Court, Pune.

3. In the Statement of Claim filed by the workman, he has stated that he was absent for the period stated in the charge sheet on account of his personal difficulties and due to wife's accident. The workman has contended further that the Enquiry Officer did not take into consideration the explanation or the evidence submitted by him at the enquiry. In the Written Statement, the Petitioner has pointed out that the enquiry has been held in consonance with the principles of natural justice and fair play and the services of the Respondent workman had been terminated on account of his

habitual absence. It was also stated that several opportunities for improvement had been extended to the workman on earlier occasions when he had remained absent. However, the Petitioner found that the workman had not improved his behaviour at all.

4. The Labour Court framed the issue as to whether the enquiry held against the Respondent workman was fair and proper and whether the findings are perverse. The Labour Court has come to the conclusion that the enquiry held against the Respondent workman was not fair and proper and that the findings were perverse.

5. Aggrieved by this Award Part-I of the Labour Court, the Petitioner Company has approached this Court by way of the present Writ Petition. The Labour Court has found that the Petitioner Company has not given reasonable opportunities to the Respondent workman to defend himself at the enquiry. There is no dispute that the Petitioner had held an enquiry pursuant to the charge sheet issued to the workman. On the first date of the enquiry, the Respondent had stated before the Enquiry Officer that he had received the charge sheet and explained the contents thereof. He had also stated that he did not want to engage any Union's representative to defend him at the enquiry. On the next date, the Respondent workman remained absent at the

enquiry and hence was given an opportunity to remain present on the next date of the enquiry. On 12th October 1993, the Respondent workman was present before the Enquiry Officer. The evidence of Management's witness No.1 was recorded and after the examination in chief, the Respondent was called upon to cross-examine the witness. However, he declined to do so. Similarly, the Respondent declined to examine the second witness of the Management. Thereafter, the Management declared its evidence closed and the Enquiry Officer called upon the Respondent to lead his evidence. The Respondent stated that he did not desire to lead any evidence. However, he stated that in future he would ensure that no problems regarding his absence would occur and that a lenient view should be taken in the matter. The enquiry was closed thereafter.

6. On consideration of the enquiry proceedings, it is clear that the Enquiry Officer had given sufficient opportunities to the Respondent workman to remain present to cross-examine the witnesses and to lead his own evidence. The Respondent while filing the Statement of Claim has stated that he was not given an opportunity. Similarly, in the evidence led before the Labour Court, he has improved his case by stating that he was not allowed to cross-examine the witnesses of the Management. The Respondent has admitted that he had not

complained at all to the Enquiry Officer or to the Management that he was forced to sign on the enquiry notes without explaining the contents thereof.

7. In such circumstances, it is difficult to comprehend as to how the Labour Court arrived at the conclusion that the enquiry held against the Respondent No.1 workman was not fair and proper. The enquiry has been held in consonance with the principles of natural justice and, therefore, is fair and proper. The Labour Court has come to the conclusion that the findings are perverse without any discussion, since the enquiry was held in breach of the principles of natural justice. The Petition is, therefore, allowed. Rule made absolute. Award Part-I set aside. The Labour Court will decide whether the findings of the Enquiry Officer are perverse and whether the Respondent No.1 workman is entitled to any relief.

8. The Reference which is of the year 1996 shall be disposed of expeditiously and in any event by 31st October 2005.